IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6006 to 6008 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6006 to 6008 of 2002

MR IS SUPEHIA for Petitioner No. 1

Mr.Mehta, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/01/2003

ORAL(COMMON) JUDGEMENT

Rule. Mr.Mehta, Ld.AGP waives service of rule.

With the consent of parties matters are taken up for

final hearing.

2. Since common questions are involved and short facts are, more or less, common these petitions are being disposed of by this common judgment.

3. The only point involved in this group of petitions is that whether the amounts can be recovered from the employee on account of wrongful fixation of payscale for which no fault can be attributed to the employee concerned.

4. The short facts of these cases are that the petitioners were serving as Sales Tax Officers in the Sales Tax Department of the State Govt. Petitioner of SCA No.6006/01 retired on 31.1.01, petitioner of SCA No.6007/01 retired on 30.4.01 and the petitioner of SCA No.6008/01 retired on 31.8.01. The State Govt had passed the resolution dated 5.7.91 and it is the case of the petitioner that pursuant to said resolution petitioners came to be granted higher grade of payscale with effect from 1.6.1987 and accordingly the amounts due were also paid to the petitioners. Thereafter, another resolution came to be passed on 11.12.1995 whereby the higher grade of payscale granted to the petitioner came to be cancelled and the amounts paid were sought to be recovered. The petitioners were communicated by letters dated 27.6.01, 7.7.01 and 3.3.02 respectively for recovery of amounts. So far as the petitioner of SCA No.6006/01 is concerned, an amount of Rs.1,15,647/- is sought to be recovered. So far as petitioner of SCA No.6007/01 is concerned no figure was quantified and so far as petitioner of SCA No.6008/01 is concerned amount of Rs.1,00,019/- is sought to be recovered. Under these circumstances petitioners have approached this court.

5. Mr.Supehia, learned advocate for the petitioners has contended, interalia, that the issues in these petitions are covered by the judgment of the Division Bench of this Court dated 4/4/01 in LPA No.578/00 in SCA No.2196/1999. He further submitted that even the Apex Court in the matter of P.H.Reddy vs N.T.R.D. reported in 2002(2) SLR 694 has taken the similar view. He submitted that as per the aforesaid decision once the higher payscale was fixed and the amount is paid to the employee, thereafter, if subsequently said decision is cancelled or revoked recovery can not be effected.

6. On behalf of respondent-State, Mr.Mehta, Ld.AGP has not been able to show that the recovery was sought to be effected on account of granting higher payscale which

was by way of fraud or other misdeed which can be attributed to the employee concerned.

7. In view of the above, what is required to be noted is that there is no dispute on the point that pursuant to the decision of the higher authority the payscale in the higher grade was granted to the petitioner and after a period of about more than 4 years the decision is taken of cancelling the earlier decision and as a consequence thereof recovery is sought to be effected. It is not the case of the respondents that the higher payscale came to be granted on account of fraud or misrepresentation or any misdeed which can be attributed to the concerned employee. Therefore, it appears that it is on account of subsequent change of decision by the authority without attributing anything to the concerned employee the decision is cancelled and the recovery is sought to be effected. Therefore, under the circumstances, it will have to be examined as to whether such an act on the part of respondents is permitted under law or not.

8. In case of I.C.Patel (supra) the division bench of this court observed as under:

> "The mistake was committed by the Board for which the appellant should not be penalised. Recovery of excess payment made to the appellant for no fault on his part appears to be wholly unjustified."

In case of P.H.Reddy (supra) the Apex Court also found that the order of fixation passed by the appropriate authority does not require any interference. Still however, the Apex Court observed as under:

> "The employees-appellant, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of the order of the authority is set aside."

9. In the above view of the matter, I find no further discussion is required since the question is squarely covered by the decision of the Division Bench of this court as well as of the Apex Court.

10. In view of the aforesaid discussion, all these petitions succeed. The impugned orders of recovery of amounts which are challenged in respective petitions are quashed and set aside and the petitions are allowed to

the aforesaid extent. It is made clear that if any amount of retiral benefits is withheld on account of the impugned decision of recovery of amounts, same shall be released forthwith in accordance with law. Rule in each petition is made absolute accordingly. There shall be no order as to costs.

28.1.03 (JAYANT PATEL,J)